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HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

CONCLUDING OBSERVATIONS OF THE HUMAN RIGHTS COMMITTEE

United Kingdom of Great Britain and Northern Ireland (Hong Kong)

1. At its 1451st to 1453rd meetings, held on 19 and 20 October 1995, the Human Rights Committee considered the part of the fourth periodic report of the United Kingdom of Great Britain and Northern Ireland relating to Hong Kong (CCPR/C/95/Add.5 and HRI/CORE/1/Add.62), and adopted 1/ the following observations:

A. Introduction

2. The Committee welcomes the presence of a high level delegation which included several officials of the Hong Kong Government. It expresses its appreciation to the representatives of the State party for the high quality of the report, abundance of additional information and detailed and frank answers provided in response to the oral and written questions posed and comments made by the Committee during its consideration of the report. The Committee notes with satisfaction that such information enabled it to engage in a highly constructive dialogue with the State party.

3. The detailed information submitted by a wide range of non-governmental organizations has greatly assisted the Committee in its understanding of the human rights situation in Hong Kong.

B. Factors relating to reporting obligations under the Covenant

4. The Committee notes that the United Kingdom and the People's Republic of China have agreed in the Joint Declaration and Exchange of Memoranda of 19 December 1984 that the provisions of the Covenant as applied to Hong Kong shall remain in force after 1 July 1997. In this connection, the Committee, at its 1453rd meeting on 20 October 1995, made clear its view on future reporting obligations in relation to Hong Kong in a statement made by the Chairperson, which is attached to the present document that, as the reporting obligations under article 40 of the Covenant will continue to apply, the Committee will be competent to receive and consider reports that must be submitted in relation to Hong Kong.

C. Positive aspects

5. The Committee welcomes the initiatives taken by the Government with a view to ensuring the full implementation of the Covenant in Hong Kong, in future as well as at present. In that regard, the Sino-British Joint Declaration on the question of Hong Kong appears to provide a sound legal basis for the continued protection of the rights as specified in the Covenant. The Committee welcomes the enactment of the Bill of Rights Ordinance in June 1991.

6. The Committee takes note with appreciation of the various ordinances that have been reviewed as to their conformity with the Bill of Rights and amended accordingly, and also appreciates the continuing process of reviewing and updating of relevant legislative provisions in that regard.

7. The Committee welcomes efforts being made by the authorities to disseminate information on human rights to members of the judiciary, civil servants, teachers and the public in general, including school-age children.

8. The Committee further welcomes the recent enactment of the Sexual Discrimination Ordinance and the Disability Discrimination Ordinance, the aims of which include the elimination of discrimination against women and disabled persons. It welcomes the oral information provided by the authorities that an Equal Opportunities Commission will be established in the first quarter of 1996 with power to recommend draft laws and draft amendments to these Ordinances.

9. The Committee welcomes the enactment of the Torture Ordinance, which gives domestic effect to part of article 7 of the Covenant.

D. Principal subjects of concern

10. The Committee notes that Section 7 of the Bill of Rights Ordinance provides that "the Ordinance binds only the Government and all public authorities; and any person acting on behalf of the Government or a public authority". The Committee emphasizes in this regard that under the Covenant a State party does not only have an obligation to protect individuals against violations by Government officials but also by private parties. It thus notes with deep concern the absence of legislation providing effective protection against violations of Covenant rights by non-governmental actors.

11. The Committee expresses concern over the investigative procedure in respect of alleged human rights violations by the police. It notes that the investigation of such complaints rests within the Police Force itself rather than being carried out in a manner that ensures its independence and credibility. In light of the high proportion of complaints against police officers which are found by the investigating police to be unsubstantiated, the Committee expresses concern about the credibility of the investigation process and takes the view that investigation into complaints of abuse of authority by members of the Police Force must be, and must appear to be, fair and independent and must therefore be entrusted to an independent mechanism. The Committee welcomes the changes made to strengthen the status and authority of the Independent Police Complaints Council but notes that these changes still leave investigations entirely in the hands of the police.

12. The Committee notes with concern that, while the majority of the population is Chinese-speaking, official charge forms and charge sheets as well as court documents are in English only, though efforts are being made to make Chinese versions available.

13. The Committee expresses concern over the situation of women in Hong Kong, particularly the high level of violence and the absence of adequate punitive or remedial measures. It regrets that the Sexual Discrimination Ordinance is not yet in force and that it limits the damages awarded to women who are subject to sexual discrimination and does not give power to direct the reinstatement of women who have lost their jobs due to sexual discrimination. The Committee is also concerned that the Sexual Discrimination Ordinance has significant exemptions and that it is limited in its application to discrimination based on gender and marriage and does not prohibit discrimination on ground of age, family responsibility or sexual preference.

14. The Committee notes with concern that there is as yet no detailed regulations to cover emergencies and that under the Court of Final Appeal Ordinance, the jurisdiction of the Court will not extend to reviewing undefined "acts of state" by the executive. The Committee is concerned that vague terminology such as "acts of state" may be interpreted so as to impose undue restrictions on the jurisdiction of the Court, including the application of any emergency laws that may be enacted in the future.

15. The Committee also regrets that there is not yet detailed legislation to cover emergency and that the provision in article 18 of the Basic Law on that subject appears not to correspond with the provisions of article 4 of the Covenant.

16. The Committee expresses concern that the administration of legal aid in Hong Kong is refused in a large number of Bill of Rights cases that are directed against the Government or public officers.

17. While noting with satisfaction the efforts by the Government, in cooperation with the United Nations High Commissioner for Refugees, to care for the needs of the Vietnamese asylum-seekers, the Committee expresses concern that many Vietnamese asylum-seekers are subject to long-term detention and that many are held under deplorable living conditions that raise serious questions under articles 9 and 10 of the Covenant. It is particularly alarmed

about the situation of children living in camps who are deprived of enjoyment of rights under the Covenant in practice, given their parents' status as illegal immigrants. The Committee also expresses concern at the conditions under which deportations and removals of non-refugees of Vietnamese origin were carried out in practice.

18. With respect to article 17, the Committee takes note of the Law Reform Commission's review of the Telecommunication Ordinance and the Post Office Ordinance. The Committee notes with concern that these ordinances can be abused to intrude on the privacy of individuals and that their amendment is urgently required.

19. The Committee is aware of the reservation made by the United Kingdom that article 25 does not require establishment of an elected Executive or Legislative Council. It however takes the view that once an elected Legislative Council is established, its election must conform to article 25 of the Covenant. The Committee considers that the electoral system in Hong Kong does not meet the requirements of article 25, as well as articles 2, 3 and 26 of the Covenant. It underscores in particular that only 20 of 60 seats in the Legislative Council are subject to direct popular election and that the concept of functional constituencies, which gives undue weight to the views of the business community, discriminates among voters on the basis of property and functions. This clearly constitutes a violation of articles 2, paragraph 1, 25 (b) and 26. It is also concerned that laws depriving convicted persons of their voting rights for periods of up to 10 years may be a disproportionate restriction of the rights protected by article 25.

E. Suggestions and recommendations

20. The Committee recommends that efforts be accelerated to introduce, as soon as possible, Chinese versions of official charge forms and charge sheets as well as court documents.

21. The Committee recommends that the State party adopt the proposal of the Independent Police Complaints Council to incorporate non-police members in the investigation of all complaints against the police.

22. The Committee recommends that the State party reconsiders its decision on the establishment and competence of a Human Rights Commission.

23. The Committee recommends that the deficiencies in the Sexual Discrimination Ordinance be overcome by appropriate amendments and that comprehensive anti-discrimination legislation aiming at eliminating all remaining discrimination prohibited under the Covenant be adopted.

24. The Committee urges the Government to take immediate steps to ensure that living conditions in Vietnamese Refugee detention centres be improved. Special attention should be devoted to the situation of children whose rights under the Covenant should be protected. Refugee status of all detainees should be speedily determined with right of judicial review and legal aid. Deportation and removal of non-refugees of Vietnamese origin should be closely monitored to prevent abuse.

25. The Committee recommends that immediate steps be taken to ensure that the electoral system be put in conformity with articles 21, 22 and 25 of the Covenant.

F. Request for a report

26. The Committee requests the Government of the United Kingdom to submit a brief report, by 31 May 1996, on new developments with regard to the enjoyment of human rights in Hong Kong, pursuant to the recommendations contained in these Observations and in the attached Statement by the Chairperson, for consideration by the Committee at its fifty-eighth session to be held in Geneva from 21 October to 8 November 1996.

STATEMENT BY THE CHAIRPERSON ON BEHALF OF THE HUMAN RIGHTS COMMITTEE RELATING TO THE CONSIDERATION OF THE PART OF THE FOURTH PERIODIC REPORT OF THE UNITED KINGDOM RELATING TO HONG KONG 2/

The Human Rights Committee - dealing with cases of dismemberment of States parties to the International Covenant on Civil and Political Rights - has taken the view that human rights treaties devolve with territory, and that States continue to be bound by the obligations under the Covenant entered by the predecessor State. Once the people living in a territory find themselves under the protection of the International Covenant on Civil and Political Rights, such protection cannot be denied to them by virtue of the mere dismemberment of that territory or its coming within the jurisdiction of another State or of more than one State. 3/

However, the existence and contents of the Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong make it unnecessary for the Committee to rely solely on the foregoing jurisprudence as far as Hong Kong is concerned. In this regard, the Committee points out that the parties to the Joint Declaration have agreed that all provisions of the Covenant as applied to Hong Kong shall remain in force after 1 July 1997. These provisions include reporting procedures under article 40. As the reporting requirements under article 40 of the International Covenant on Civil and Political Rights will continue to apply, the Human Rights Committee considers that it is competent to receive and review reports that must be submitted in relation to Hong Kong.

Accordingly, the Committee is ready to give effect to the intention of the parties to the Joint Declaration as far as Hong Kong is concerned, and to cooperate fully with the parties to the Joint Declaration to work out the necessary modalities to achieve these objectives.

Notes

1/ At its 1469th meeting (fifty-fifth session) held on 1 November 1995.

2/ Read out by the Chairman at the Committee's 1453rd meeting on 20 October 1995.

3/ See documents CCPR/C/SR.1178/Add.1, CCPR/C/SR.1200, CCPR/C/SR.1201 and CCPR/C/SR.1202.